THE HON'BLE SRI JUSTICE V.ESWARAIAH

W.P.No.26651 of 2005

Dt.15.12.2005

Between:

The Toddy Tappers Co-operative Society,

Zaheerabad Village and Mandal, Medak District,

Rep. by its President, V.Krishna Mohan Goud. … Petitioner

And

The Prohibition and Excise Superintendent,

Medak District at Sanga Reddy District. … Respondent

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for Prohibition and Excise.

The petitioner herein is a Toddy Tappers Co-operative Society, Zaheerabad Village and Mandal, Medak District, to whom licences in respect of toddy depot and four shops were granted from 13.5.2002 to 31.3.2007. It is stated that the licences for the depot and toddy shop No.3 were granted at the premises No.1-1-131 situated at Manik Mahella, Zaheerabad. Thereafter, an application was made for shifting of the toddy shop No.3 and accordingly the said shop was shifted to Shop No.3-3-96/2/3 at Dattagiri Colony, near National Highway, Zaheerabad vide proceedings of the District Collector dated

24.6.2004. It is stated that the depot licence was cancelled pursuant to the orders of the Government in G.O.Ms.No.551 dated 29.4.2005 omitting sub rule (2) of Rule 4 of A.P.Excise (Tapping of Trees and Toddy Shops Special Conditions of Licences General Conditions) Rules 1969, with effect from 30.4.2005 and shop No.3 of the petitioner was also shifted with effect from 24.6.2004 and no business was carried out at the old place of the said shop and the depot. However, the excise officials have inspected the toddy depot and shop No.3 on 25.5.2005 and tested the toddy with prescribed chemicals and found that it was adulterated with Chloral Hydrate. Thereafter, samples were drawn under cover of panchanama and sent one sample bottle to the Chemical Examiner to Government for Excise, Nizamabad for analysis through the Court of the Judicial First Class Magistrate, Zaheerabad. The Chemical Examiner, Nizamabad, tested the toddy with prescribed chemicals and found that the toddy was mixed with Chloral Hydrate. It is stated that based on the spot test conducted on 25.5.2005 the licence of the petitioner society was suspended by order 25.5.2005 itself. Questioning the said order dated 25.5.2005 in suspending the licence of toddy shop No.3 situated at the new premises No.3-3-96/2/3 at National Highway, Zaheerabad based on the alleged inspection of the premises No.1-1-131, Ward No.1, Manikprabhu Mohella, Zaheerabad, the petitioner filed W.P.No.16671 of 2005 and this Court by order dated 31.8.2005 disposed of the same holding that since there is a prima facie case of adulteration, the order of the suspension cannot be said to be illegal and arbitrary, however, as there is no progress in enquiry after suspension order and the contention raised by the petitioner is a question of fact to be decided and determined in the enquiry itself and therefore without going into the merits of the case directed the respondent to complete the enquiry within one month from the date of receipt of the said order after giving reasonable opportunity to the petitioner. It is stated that the enquiry was not completed within the said period and therefore the petitioner filed another W.P.No.20076 of 2005 to declare the action of the respondent in not expediting the enquiry and whether depot licence of TCS Zaheerabad is in

existence as on 25.5.2005 and whether a false case has been foisted by suspending the licence as long back as on 25.5.2005 as illegal and consequently direct the respondent to expedite and complete the enquiry. The said writ petition was disposed of on 13.9.2005 directing the respondent to complete the enquiry within a period of one month from the date of receipt of a copy of the said order after considering the representation, if any, submitted by the petitioner. Thereafter, the petitioner filed another W.P.No.24677 of 2005 questioning the show cause notice issued for cancellation of licence of the petitioner in not deciding the suspension pending enquiry order dated 25.5.2005 and the issuance of the show cause notice for cancellation dated 15.10.2005 pursuant to the enquiry report dated 31.9.2005 as per orders of this Court in W.P.Nos.16671 and 20076 of 2005 as illegal and arbitrary and consequently direct the respondent to decide upon the suspending pending enquiry orders dated 25.5.2005 and show cause notice for cancellation dated 15.10.2005 in the light of the enquiry report dated 31.9.2005 as per the aforesaid orders of this Court. The said writ petition was disposed of on 18.11.2005 stating that the show cause notice was issued as recently as on 15.10.2005, the further action was hampered on account of the fact that certain Shop Nos.1, 2 and 4 were also included in the purview of the show cause notice and therefore it cannot be said that there was undue delay on the part of the respondent in concluding the proceedings and accordingly directed the respondent to conclude the proceedings in relation to the licences of Depot and Shop No.3 issued to the petitioner within a period of four weeks from the date of receipt of a copy of the said order.

Thereafter both show cause notices dated 17.11.2005 have been issued calling upon the petitioner to submit explanation within seven days as to why the licence of Toddy shop TCS Zaheerabad No.3 as well as the toddy depot dated 19.4.2002 issued in favour of the petitioner should not be cancelled for the rest of the lease period of the licence under Section 31(1)(b) and Section 37 of A.P.Excise Act,

1968. Questioning the said show cause notices, this writ petition has been filed.

The learned counsel for the petitioner submits when the enquiry report has been submitted by the respondent on 31.9.2005 to the Secretary to Commissioner, Prohibition and Excise, Hyderabad, no reference has been made in the show cause notices and therefore the said show cause notices are illegal and contrary to the earlier orders of this Court.

I am unable to accept the said contention of the learned counsel for the petitioner for the reason that in fact the petitioner filed W.P.No.24677 of 2005 seeking writ of mandamus to complete the enquiry in the light of the enquiry report dated 31.9.2005. But this Court has not expressed any opinion with regard to the said enquiry report. Therefore, I am of the opinion that the internal correspondence between the Department cannot form basis to the petitioner that the respondent is bound to consider his own enquiry report dated 31.9.2005 submitted to the superior officers. However, the said report does not absolve the guilt of the petitioner.

The learned counsel for the petitioner submits that in fact when the earlier show cause notice dated 15.10.2005 was issued proposing to cancel all the depot licence as well as of the toddy shops and when the show cause notice was set aside in respect of shop Nos.1, 2 and 4, it is not open for the respondent to issue fresh show cause notice dated 17.11.2005 to cancel all the shops.

I am of the opinion that no show cause notice has been issued for cancellation of toddy shop Nos.1, 2 and 4, but the show cause notices are issued only for cancellation of licence of shop No.3 as well as the depot. Therefore, the said contention is without any foundation.

It is further stated that the show cause notice in respect of Shop No.3 and depot licence was upheld by this Court in the earlier W.P.No.22959 of 2005 by order dated 26.10.2005. It is true that when

the earlier show cause notice was upheld in respect of shop No.3 and the toddy depot, the Excise Superintendent ought to have passed consequential orders based on the earlier representation/explanation, but by issuing the proposed show cause notice, no prejudice is caused to the petitioner. Therefore, I am not inclined to accept the contention of the learned counsel for the petitioner that the toddy shop was not functioning at the earlier premises and that the toddy shop was also kept closed and the petitioner society is not at all held responsible for the alleged adulteration at the depot as well as at shop No.3. All these questions of fact have to be decided and determined by the Excise Superintendent by way of passing final orders.

For the aforesaid reasons, I do not see any merit in this writ petition. The writ petition is accordingly dismissed. No costs.

The learned counsel for the petitioner requests to direct the respondent to pass final orders immediately pursuant to the explanation submitted by the petitioner to the earlier show cause notices.

Nothing has been stated in this writ petition whether the petitioner has filed any explanation pursuant to the show cause notices or not. Therefore, without expressing any opinion on the merits of the case, which may adversely affect the interests of the petitioner, the respondent is directed to pass appropriate orders, if not already passed, within a period of three weeks from the date of receipt of a copy of this order.

(V.ESWARAIAH, J.)

15.12.2005

Note: Issue copy within three days

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